HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 25, 2015
84th Legislature, Number 79
The House convenes at 10 a.m.
Part Two

Twenty-five bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 79

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Monday, May 25, 2015

84th Legislature, Number 79

Part 2

SUBJECT: Veterans treatment court programs and program functions

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 5 ayes — S. King, Frank, Aycock, Blanco, Farias

1 nay — Shaheen

1 absent — Schaefer

SENATE VOTE: On final passage, April 30 — 31-0, on local and uncontested calendar

WITNESSES: For — (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; Mary Covington, Harris County Veterans' Treatment Court; Bill Kelly, Mental Health America of Greater Houston; Laura Austin and Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Jim Brennan, Texas Coalition of Veterans Organizations; Lashondra Jones, Texas Criminal Justice Coalition; Kate Murphy, Texas Public Policy Foundation; Conrad John, Travis County Commissioners Court)

Against — None

On — Megan LaVoie, Office of Court Administration

BACKGROUND: Government Code, sec. 124.001 governs the veterans court program, which was established in 2009 through the enactment of SB 1940 by Van de Putte. This specialty court program is designed integrate mental health and substance abuse treatment with other strategies to address underlying problems that cause criminal behavior in an attempt to reduce recidivism among military veterans charged with certain crimes.

DIGEST: CSSB 1474 would change the name of the program from "veterans court program" to "veterans treatment court program" and would amend various program provisions.

Program eligibility and participation. The bill would remove the

requirement that an injury, illness, disorder, or trauma qualifying the defendant for the veterans treatment court program have resulted from service "in a combat zone or other similar hazardous duty area." It would add that defendants could be eligible to participate in the program if the court found that they were victims of "military sexual trauma" — i.e., sexual assault or sexual harassment that occurred while the victim was a member of the armed forces performing the person's regular duties.

A defendant also could be eligible if, considering his or her background, the defendants' participation in the program could help ensure public safety through rehabilitation of the veteran.

The veterans treatment court program could allow participants to comply with their ordered treatment plans or other court obligations through videoconferencing or other internet-based communication.

These changes to program eligibility and participation would apply only to a person who entered a veterans treatment court program on or after the effective date of the bill, regardless of whether the person committed the offense for which they entered the program before, on, or after that date.

Defendant supervision. CSSB 1474 also would allow a veterans treatment court program to transfer the responsibility for supervising a defendant's participation in the program to another veterans treatment court program located in the county where the defendant worked or resided. To transfer supervision, both court programs and the defendant would have to consent.

If a defendant whose supervision was transferred did not complete the program, the supervising court program would return the responsibility for the defendant's supervision to the court program that initiated the transfer. If the defendant was charged with an offense in a county where there was no veterans treatment court program, then the court where the criminal case was pending could place the defendant in a program located in the county where the defendant worked or resided, if the defendant agreed.

These provisions regarding courtesy supervision of defendants would apply only to a person who was under the supervision of a veterans

treatment court program on or after the effective date of the bill.

To the extent of any conflict, CSSB 1474 would prevail over any bill enacted by the 84th Legislature relating to non-substantive additions to and corrections in enacted codes.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 1474 would address the specific needs of military veterans and provide eligible veterans an alternative to incarceration. Many of these veterans are dealing with drug or alcohol dependence and may require special care in the criminal justice system.

The bill would provide the courts with more flexibility over who was admitted into the program by removing the requirement that any illness or injury have occurred "in a combat zone or other similar hazardous duty area." The bill also would expand who would be eligible for the program by adding victims of military sexual trauma.

The court program would not order any veteran to take medications. The court could order only that veterans in the program comply with services ordered by the Department of Veterans Affairs' hospitals or treatment centers. Many times the orders enforced do not include medication but are orders for counseling programs. Any recommendations for hospital treatment would be done only through the recommendations of a Department of Veterans Affairs counselor or other local counselor outside of the court's purview.

OPPONENTS SAY:

CSSB 1474 would expand a separate justice system for veterans that could lead to court orders for veterans to take medications for mental illnesses and trauma when they might not need medication to deal with their suffering. The bill would apply to veterans or current military members who suffered from a brain injury, mental disorder, chemical dependency, or military sexual trauma. These individuals can be more vulnerable to court orders requiring medication or hospitalization for treatment.

SUBJECT: Allowing OPIC to publish insurance specimen policies on its website

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Workman

0 nays

2 absent — Sheets, Vo

SENATE VOTE: On final passage, March 30 — 22-8 (Bettencourt, Burton, Campbell, Hall, Hancock, Huffines, Kolkhorst, V. Taylor)

WITNESSES: No public hearing

BACKGROUND: Insurance Code, ch. 1812 gives property and casualty insurers the option to post specimen policies on their websites rather than provide these documents on paper. Specimen policies are samples that contain no personally identifiable information but otherwise reflect the information and provisions of a standard policy or insurance form.

An insurer that posts a specimen policy on its website must make the policy available to consumers. In addition, under sec. 1812.003(a)(3), the insurer must provide an electronic copy of the specimen policy to the Texas Department of Insurance and the Office of Public Insurance Counsel that may be posted on both agencies' websites.

DIGEST: SB 494 would authorize the Office of Public Insurance Counsel (OPIC) to post property and casualty insurers' specimen policies on the OPIC website. This online posting would not create a duty under Insurance Code, ch. 1812 for an insurer to make the policy available to consumers.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: SB 494 would increase transparency and disclosure to insurance

consumers. Allowing Office of Public Insurance Counsel (OPIC) to post specimen policies on its website could supplement OPIC's existing insurance comparison tool by enabling consumers to view actual sample policies when comparing insurance companies.

While OPIC already may have the authority to post specimen policies under the Insurance Code, concerns about litigation have kept the office from adding this feature to its website. The bill would clarify that the Insurance Code gives the office the explicit authority to post specimen policies online.

OPPONENTS SAY:

SB 494 could remove the discretion of insurers whether to publish specimen forms by explicitly allowing OPIC to post specimen policies on its website. The decision to publish specimen policies online should be left entirely to the insurer, and the government should play no role.

SUBJECT: Requiring courts to maintain lists of certain court appointees

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, S. Thompson

0 nays

1 absent — Sheets

SENATE VOTE: On final passage, May 4 — 31-0

WITNESSES: For — Kelley Smoot Garrett, Americans Against Abusive Probate Guardianship; Debby Valdez, GRADE; Guy Herman, Travis County Probate Court; Kristi Hood; Sherry Johnston; (*Registered, but did not testify*: Tanya Lavelle, Easter Seals Central Texas; Linda Litzinger; Jolene Sanders)

Against — Rory Olsen

On — David Slayton, Office of Court Administration, Texas Judicial Council; Tina Amberboy, Supreme Court Children's Commission

BACKGROUND: Government Code, sec. 74.092 requires administrative judges in statutory county courts to establish and maintain a list of all attorneys qualified to serve as an attorney ad litem. Judges are required to appoint attorneys ad litem on a rotating basis from these lists. There is a broad exception to the appointment requirement for attorneys ad litem appointed under the Family Code, Health and Safety Code, Human Resources Code, Property Code, and Texas Probate Code.

DIGEST: CSSB 1876 would require each court in the state to establish and maintain lists of:

- all attorneys who are qualified to serve as an attorney ad litem and are registered with the court;

- all attorneys and other persons who are qualified to serve as a guardian ad litem and are registered with the court;
- all persons who are registered to serve as a mediator; and
- all attorneys and private professional guardians who are qualified to serve as a guardian.

The bill would require local administrative judges, at the request of a court, to establish and maintain these lists for the courts. Multiple lists could be established that are categorized by the type of case and the person's qualifications. The lists would be posted at the courthouse and on any Internet website of the court.

The bill would require courts to appoint attorneys ad litem, guardians ad litem, guardians and mediators off the lists on a rotating basis, unless the parties agree to the appointment of a different person or the court found good cause, based on specialized education, training, certification, or skill, to appoint a different person.

The bill would establish that the appointment requirements did not apply to:

- mediations conducted by an alternative dispute resolution system;
- appointments of charitable organization composed of volunteer advocates as guardians ad litem;
- appointments of attorneys ad litem, guardians ad litem, amicus attorneys, or mediators from a domestic relations office; or
- a person other than an attorney or professional guardian appointed to serve as a guardian.

Presiding judges of statutory probate courts would require local administrative judges to ensure that all statutory probate courts in a county complied with the appointment requirements.

The bill also would allow judges of statutory county courts to adopt rules related to the establishment and maintenance of these lists.

This bill would take effect September 1, 2015, and would apply only to

appointments of attorneys ad litem, guardians ad litem, mediators, or guardians made on or after that date.

SUPPORTERS SAY:

CSSB 1876 is necessary to ensure that judges follow a rotation system when appointing attorneys ad litem, guardians ad litem, mediators, and guardians. The rotation system would make it difficult for judges to practice favoritism or nepotism in their appointments. The requirement that the lists be publicly posted would increase transparency and ensure that the public saw judicial appointments as fairly distributed.

The bill would not take away judges' discretion, as it still would provide for judges to deviate from the rotational system if the court found good cause.

OPPONENTS SAY:

CSSB 1876 would reduce the discretion of judges in an essential judicial function. Appointments of attorneys ad litem, guardians ad litem, mediators, and guardians requires more than simply a rotational order, and judges should have the authority to consider all relevant factors when making appointments.

SUBJECT: Determining the supply of groundwater in certain regional water plans

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 10 ayes — Keffer, Ashby, D. Bonnen, Burns, Frank, Kacal, T. King, Larson, Lucio, Workman

0 nays

1 absent — Nevárez

SENATE VOTE: On final passage, April 30 — 31-0, on local and uncontested calendar

WITNESSES: *(On House companion bill, HB 3942)*
For — Walt Sears, Northeast Texas Municipal Water District; (*Registered, but did not testify:* Fred Aus, Texas Rural Water Association; Patricia Hayes, Texas Association of Groundwater Owners and Producers; Linda Price, Northeast Texas Region D Water Planning Group)

Against — Harvey Everheart, Mesa Underground Water Conservation District

On — Leah Adams, Panola County Groundwater Conservation District; Steve Box, Environmental Stewardship; Amanda Maloukis, Rusk County Groundwater Conservation District

BACKGROUND: Under Water Code, sec. 16.053, every five years each of the 16 regional water planning groups covering the state must submit to the Texas Water Development Board (TWDB) a regional water plan that is consistent with the guidance principles for the state water plan, provides information based on data provided by the TWDB, and is consistent with the desired future conditions adopted for the relevant aquifers located in the regional water planning area.

As part of the joint planning process, groundwater management areas, with participation from groundwater conservation districts within the footprint of the management area, determine the desired future conditions

of groundwater resources within a groundwater management area.

DIGEST:

SB 1101 would require a regional water planning group to determine the supply of groundwater for regional planning purposes if no groundwater conservation district existed within the area.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

SB 1101 would allow a regional planning group to have a seat at the table for determining desired future conditions of aquifers if there were no groundwater conservation districts within the planning group. SB 1101 would affect only Region D because it is the only regional water planning group without a groundwater conservation district.

Without a groundwater conservation district in the area to help define the desired future conditions of the aquifers, Region D has been required to use water supply numbers generated by the two different groundwater management areas covering the area. Conflicting numbers have caused unnecessary complications in completing the regional water plan for Region D, which could have an impact on state water plan funding for the region.

OPPONENTS SAY:

SB 1101 could have unintended consequences. New rules for adopting desired future conditions went into effect in 2011. It is important to complete the current five-year water planning process under the new rules before any changes are made.

SUBJECT: Use of opioid antagonists for the treatment of suspected opioid overdoses

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Crownover, Naishtat, Collier, S. Davis, Guerra, R. Miller, Sheffield, Zerwas

0 nays

3 absent — Blanco, Coleman, Zedler

SENATE VOTE: On final passage, April 22 — 30-0

WITNESSES: For — Rene Garza, Texas Pharmacy Association; (*Registered, but did not testify*: Cynthia Humphrey, Association of Substance Abuse Programs; Robin Peyson, Communities for Recovery; Cate Graziani, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness-Texas; Fred Shannon, National Safety Council; Amber Pearce, Pfizer; Stephen Minick, Texas Association of Business; Juliana Kerker, Texas College of Emergency Physicians; Scott Henson, Texas Criminal Justice Coalition; Darren Whitehurst, Texas Medical Association; Charles Thibodeaux, Texas Overdose Naloxone Initiative; Krista Crockett, Texas Pain Society; Justin Hudman, Texas Pharmacy Association)

Against — None

On — (*Registered, but did not testify*: Lisa Ramirez, Department of State Health Services; Kerstin Arnold, Texas State Board of Pharmacy)

BACKGROUND: An opioid antagonist is a drug used to completely or partially reverse a person's overdose due to opioids. These anti-overdose drugs usually are available only through a prescription. Some states have enacted legislation to make opioid antagonists available to first responders, health care professionals, or the friends or family of individuals at risk of overdosing on opioids.

DIGEST: CSSB 1462 would allow certain individuals to be prescribed an opioid

antagonist and would provide for the prescription, dispensation, administration, storage, distribution, and possession of opioid antagonists. An "opioid antagonist" would be defined as a drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids from acting on those receptors. An "opioid-related drug overdose" would mean a condition, evidenced by symptoms such as those specified in the bill, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

Prescription, dispensation, and administration. An authorized prescriber could prescribe and a pharmacist could dispense an opioid antagonist to:

- a person at risk of experiencing an opioid-related drug overdose; or
- a family member, friend, or other person in a position to assist a person at risk of an opioid-related drug overdose.

The opioid antagonist could be prescribed or dispensed either directly or under a standing order. The bill would allow a person or organization acting under a standing order to store and distribute an opioid antagonist, provided they did not request or receive compensation.

The bill would authorize emergency services personnel to administer an opioid antagonist to a person who appeared to be suffering an opioid-related drug overdose, as clinically indicated.

The bill would allow any person to possess an opioid antagonist, regardless of whether the person held a prescription for it.

Legitimate medical practice and sanctions. A prescription for an opioid antagonist that was filled or prescribed according to the requirements of the bill would be considered to be for a legitimate medical purpose in the usual course of professional practice. A person who was authorized to prescribe an opioid antagonist and who was acting in good faith with reasonable care would not be subject to a criminal or civil liability or any professional disciplinary action for prescribing or failing to prescribe the opioid antagonist or for the eventual administration of the opioid antagonist.

A person who acted in good faith and with reasonable care who administered an opioid antagonist to another person whom the person believed was suffering an opioid-related drug overdose would not be subject to criminal prosecution, sanction under any professional licensing statute, or civil liability for an act or omission resulting from the administration of the drug. The same provisions would apply to a person who acted in good faith and with reasonable care and did not administer the opioid antagonist.

The bill would take effect September 1, 2015, and would apply to only to conduct that was grounds for imposition of a disciplinary action, the basis of civil liability, or that constituted a criminal offense on or after that date. To the extent of a conflict between the provisions the bill and another law, the provisions of the bill would control.

SUBJECT: Procedures for appointment of counsel for out of county warrant arrests

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

SENATE VOTE: On final passage, May 5 — 31-0, on local and uncontested calendar

WITNESSES: (*On House companion bill, HB 2525*)
For — Rebecca Bernhardt, Texas Fair Defense Project; John Dahill, Texas Conference of Urban Counties; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Patricia Cummings, Texas Criminal Defense Lawyers Association; Sarah Pahl, Texas Criminal Justice Coalition; Matt Simpson, ACLU of Texas)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 1.051 governs the appointment of legal counsel for indigent criminal defendants. Art. 1.051(c) states that if certain conditions are met, courts shall appoint counsel within specified time frames. In some cases, a warrant is issued for someone's arrest in one county, but the defendant is arrested and jailed in another county. In these situations, it is unclear which county is responsible for appointing counsel if the defendant is indigent.

DIGEST: SB 1517 would establish a process for determining the responsibility for appointing counsel for indigent defendants when a warrant was issued for an arrest in one county and the defendant was arrested and jailed in another county.

If an indigent defendant was arrested under a warrant issued in a county other than the county where the arrest was made, a court in the county that issued the warrant would be required to appoint counsel within the current time frames, regardless of whether the defendant was present in the county issuing the warrant. The appointment would be required even if

adversarial judicial proceedings had not yet been initiated in the county issuing the warrant.

However, if the defendant had not been transferred or released to the county issuing the warrant before the 11th day after arrest and if counsel had not already been appointed by the arresting county, a court in the arresting county would have to immediately appoint counsel to represent the defendant for matters under Code of Criminal Procedure, ch. 11, which deals with writs of habeas corpus, and ch. 17, which deals with bail. This appointment would occur regardless of whether adversarial proceedings had been initiated in the arresting county.

If the arresting county appointed counsel in these cases, that county could seek reimbursement from the county that issued the warrant for the costs paid for the appointed counsel.

When persons arrested under out-of-county warrants were presented before magistrates, the magistrates would be required to inform them of procedures for requesting appointment of counsel and ensure that they received reasonable assistance in completing the necessary forms. If these individuals requested the appointment of counsel, the magistrate would transmit the request forms within 24 hours to a court in the county that issued the warrant.

The bill would take effect September 1, 2015, and would apply only to a person arrested on or after that date.

SUBJECT: Exempting new veteran-owned businesses from the franchise tax

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — D. Bonnen, Bohac, Button, Darby, Murphy, Parker, Springer

0 nays

4 absent — Y. Davis, Martinez Fischer, C. Turner, Wray

SENATE VOTE: On final passage, May 4 — 27-4 (Bettencourt, Burton, Garcia, Huffines)

WITNESSES: None

BACKGROUND: Tax Code, ch. 171 imposes a franchise tax on certain businesses operating in the state.

DIGEST: SB 1049 would exempt taxable entities that qualified as new veteran-owned businesses from the franchise tax and from fees imposed on the filing of certain reports with the secretary of state. This exemption would continue until either the fifth anniversary of the date on which the entity began to conduct business or until the entity ceased to qualify as a new veteran-owned business.

The bill would define a new veteran-owned business as a taxable entity if:

- each owner was a natural person who was honorably discharged from a branch of the United States armed forces;
- the entity was chartered or organized in this state; and
- first began doing business in the state on or after January 1, 2016.

The Texas Veterans Commission would be required to provide verification of a person's military service and honorable discharge in a manner prescribed by rules adopted by the comptroller.

The comptroller could require a new veteran-owned business to file an information report but could not require the entity to report or compute its

margin.

The provisions in this bill would take effect January 1, 2016, and would expire January 1, 2020.

NOTES:

The Legislative Budget Board's fiscal note indicates that this bill would have a negative impact to general revenue of $4,000 and a direct impact of a revenue loss to the property tax relief fund of $520,000 through fiscal 2016-17.

SUBJECT: Including offenses involving LSD in the state's drug-free zone laws

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

SENATE VOTE: On final passage, April 1 — 30-0

WITNESSES: (*On House companion bill, HB 3807*)
For — (*Registered, but did not testify*: Donald Baker, Texas Police Chiefs Association; Maxey Cerliano, Micah Harmon, A.J., Louderback, Larry Smith and William Travis, Sheriffs' Association of Texas; James Grunden and Bobby Sanders, Upshur County Sheriff's Office; Tiana Sanford, Montgomery County District Attorney's Office; Anna Bowers; James Capra; R. Glenn Smith)

Against — Marc Levin, Texas Public Policy Foundation Center for Effective Justice; (*Registered, but did not testify:* Destiny Young)

On — (*Registered, but did not testify:* Corwin Schalchlin, Texas Department of Public Safety)

BACKGROUND: Health and Safety Code, ch. 481 is the Texas Controlled Substances Act. It categorizes illegal substances into penalty groups and provides penalties for the manufacture, delivery, and possession of controlled substances.

Sec. 481.134 establishes drug-free zones, which include schools, youth centers, and playgrounds and certain areas around them. Certain drug offenses occurring in these zones can be punished with increased penalties, increased minimum terms of confinement, and higher fines. These increased punishments apply to substances in Penalty Groups 1, 2, 2-A, 3, and 4, and some marijuana offenses.

Sec. 481.1021 establishes Penalty Group 1-A, consisting of LSD and its salts, isomers, and salts of isomers. In 1997, LSD was removed from

Penalty Group 1, which bases punishments on weight, and was placed into a new Penalty Group 1-A, which bases punishments on abuse units.

Health and Safety Code, sec. 481.1121 establishes the punishments for the manufacture or delivery of substances in Penalty Group 1-A, and sec. 481.1151 establishes penalties for possession of substances in Penalty Group 1-A. The punishments range from a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) to life in prison or certain minimum and maximum terms, depending on the amount of drugs involved.

DIGEST:

SB 236 would add Penalty Group 1-A, LSD, to the Health and Safety Code provisions on drug-free zones. The penalty group would be added to provisions that increase the punishments for the manufacture or delivery of the substances and that increase the minimum term of confinement and the maximum fine for the manufacture, delivery, or possession of the substances.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

SB 236 would ensure that offenses related to LSD were included in the state's drug-free zones laws. When LSD was moved from Penalty Group 1 to a Penalty Group 1-A so that offenses would be based on abuse units and not weight, the drug-free zone laws were not updated to include the new penalty group. SB 236 would correct this oversight and ensure that the penalties for drug offenses involving LSD in drug-free zones were consistent with the penalties for other drug offenses. SB 236 is not the vehicle for an overhaul of the state's drug-free zone laws but merely would correct an oversight in those laws.

OPPONENTS SAY :

The state's drug-free zone laws should be revised to be based on selling drugs to a minor, rather than on the place in which the offense occurs. Basing the zones on distances from schools or other places can result in enhanced penalties for offenses that did not involve children.

SUBJECT: Expanding the major event trust fund, abolishing special events trust fund

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 7 ayes — Button, C. Anderson, Faircloth, Isaac, Metcalf, E. Rodriguez, Vo

0 nays

2 absent — Johnson, Villalba

SENATE VOTE: On final passage, April 9 — 29-2 (Burton, Huffines), on local and uncontested calendar

WITNESSES: None

BACKGROUND: The major event trust fund provides an economic incentive for organizations to host large events in Texas. The comptroller estimates the amount of state and local tax revenue to be generated by an event, and this amount is set aside in the trust fund to defray the cost of hosting the event. An event, and the respective organization that hosts it — or "site selection organization" — must be listed under Vernon's Texas Civil Statutes, art. 5190.14, sec. 5A to be eligible.

DIGEST: CSSB 633 would add the following events to the list of eligible events under the major event trust fund:

- the NCAA men's or women's lacrosse championships;
- the World Cup soccer tournament;
- the Major League Soccer All-Star Game;
- the Major League Soccer Cup;
- the Professional Rodeo Cowboys Association National Finals Rodeo;
- an Elite Rodeo Association World Championship;
- the United States Open Championship;
- the Amateur Athletic Union Junior Olympic Games;
- the Moto Grand Prix of the United States; and

- a presidential general election debate.

The bill also would add the following site selection organizations that do not already appear in the statute for the events listed above:

- Dorna Sports;
- the Amateur Athletic Union;
- the Professional Rodeo Cowboys Association;
- the Elite Rodeo Association;
- Major League Soccer;
- the United States Golf Association; and
- the Commission on Presidential Debates.

CSSB 633 also would eliminate the special events trust fund.

The bill would take effect September 1, 2015, and any plan approved under the special events trust fund before the effective date would be governed by the law as it existed prior to that date.

SUPPORTERS SAY:

CSSB 633 is necessary to maintain and advance the economic benefits that Texas garners from hosting large events. Large events create substantial tax revenues for the state and significant economic benefit to surrounding businesses, but other states, cities, and countries are beginning to compete more aggressively for large events. By adding eligible events to the major events trust fund, this bill would help Texas attract even more large events to the state and reap the economic benefit they provide.

Over the course of the last few legislative sessions, the forms that economic development has taken in the state have been in flux. As concerns about transparency and accountability have arisen, different economic development programs have been expanded and combined. This bill would focus on the major event trust fund, which has had several accountability measures added to it during the 84th and 83rd regular legislative sessions, and it would abolish the special events trust fund.

OPPONENTS SAY:

CSSB 633 would add to the transparency and oversight issues associated with the major event trust fund in the past by increasing the number of

event sponsors eligible to receive reimbursements. The government should not be engaged in economic development because providing incentives to some companies and not others distorts the free market.

SUBJECT: Abolishing the Texas Emerging Technology Fund

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 7 ayes — Button, C. Anderson, Faircloth, Isaac, Metcalf, E. Rodriguez, Vo

0 nays

2 absent — Johnson, Villalba

SENATE VOTE: On final passage, April 29 — 30–1 (Burton)

WITNESSES: For — (*Registered, but did not testify*: Cathy Dewitt and Amanda Martin, Texas Association of Business; Stephanie Simpson, Texas Association of Manufacturers)

Against — None

On — (*Registered, but did not testify*: Jon Mogford, Texas A&M University System)

BACKGROUND: Government Code, ch. 490 established the Emerging Technology Fund as a trusteed program within the Office of the Governor. Created in 2005, the fund provides grants, equity stakes, and other forms of investment to fund technology research at companies and higher education institutions with the intention of stimulating job growth and helping technology start-ups bring their products to market.

DIGEST: CSSB 632 would amend Government Code, ch. 490 to wind up and abolish the Emerging Technology Fund, beginning September 1, 2015. The state's current equity position in companies that already have received awards from the Emerging Technology Fund would be transferred to the Texas Treasury Safekeeping Trust Company. The trust company would be required to manage the equity portfolio under the prudent investor standard of care. Any proceeds earned from the sale of

investments would go to general revenue.

The bill would require money from the Emerging Technology Fund that was encumbered but had not been awarded by September 1, 2015, to be distributed in accordance with terms of the agreement unless the recipient and the governor agreed otherwise.

On final liquidation of the portfolio, the trust company would be required to notify the comptroller, who would verify that final liquidation had been completed. The comptroller then would certify to the governor that the liquidation had been completed, and the governor would post notice of the certification on the governor's website.

Certain information concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity that was considered for or received an award from the Emerging Technology Fund would be confidential unless an individual or entity consented to disclosure. Other information would be public, including:

- the name and address of an individual or entity that received an award from the fund;
- the amount of funding received by a recipient;
- a brief description of the project funded by an award;
- if applicable, a brief description of the equity position that the governor, on behalf of the state, had taken; and
- any other information with the consent of the governor, the lieutenant governor, the House speaker, and the individual or entity that received an award.

Any unencumbered balance that remained in the Emerging Technology Fund could be appropriated only to:

- the Texas Research Incentive Program;
- the Texas Research University Fund; and
- the comptroller's office to cover expenses associated with managing the state's portfolio of equity positions and investments

in projects funded under the former Emerging Technology Fund.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 632 would help get Texas out of the business of picking winners and losers. Even sophisticated private firms that specialize in early-stage funding can make errors of judgment, as evidenced by the dot-com bubble of the late 1990s. It is important that the state end the use of taxpayer money for something as speculative and volatile as venture capital.

The bill could free up $90.6 million in unexpended balances in the Emerging Technology Fund for appropriation to university research programs. Texas has some of the most advanced research universities in the world, and the state supports these institutions with billions of dollars every year. However, a significant percentage of research that emerges from Texas universities is commercialized in other parts of the country. By allowing the provision of commercialization grants in certain circumstances, this bill would provide an incentive for research to stay in Texas. As an added benefit, the grants would go to public universities and not private corporations.

OPPONENTS SAY:

CSSB 632 would end a key commitment by the state to economic development through innovation and research. By eliminating the Emerging Technology Fund, the bill could handicap Texas startups. Startups, especially in biomedical research, are highly regulated and extremely complex, and these businesses typically can take about seven years to establish themselves before they can begin hiring employees on a large scale.

California and New York both have a venture capital industry that is significantly larger than the venture capital industry in Texas, and these states also have an extensive commitment to early-stage funding. Without a similar willingness to make long-term commitments to early-stage funding, Texas may not be able to compete with these other states.

Focusing on grants for research commercialization would not signal a long-term commitment to research in the same way as taking equity in a startup. A well-managed, early-stage funding program should pay for

itself and, when done correctly, could be stable and profitable. A portfolio of early-stage funding investments could pay for itself, whereas research commercialization grants might not show the state any direct return.

OTHER OPPONENTS SAY:

CSSB 632 would move tax dollars from one "corporate welfare" fund to another. It would be better to eliminate both funds and get the government out of the business of subsidizing economic development for private industry. Any money left over from the funds could be returned to taxpayers.

The bill also would move tax dollars to a grant program that would subsidize the recruitment of Nobel Laureates and National Academy members to public universities. This would not be an efficient use of the state's limited resources.

SUBJECT: Requiring state agencies to use the federal E-Verify system for new hires

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Minjarez, Smithee

1 nay — Giddings

3 absent — Craddick, Oliveira, Sylvester Turner

SENATE VOTE: On final passage, May 7 — 20-11 (Ellis, Garcia, Hinojosa, Lucio, Menéndez, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: (*On House companion bill, HB 183*)
For — Michael Openshaw, North Texas Tea Party; (*Registered, but did not testify:* MerryLynn Gerstenschlager, Texas Eagle Forum; Cindy Asmussen)

Against — Maxie Gallardo, Workers Defense Project; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference of Bishops; Leroy Cavasos, San Antonio Hispanic Chamber of Commerce, (SAHCC); Harrison Hiner, Texas State Employees Union; Elizabeth Lippincott, Texas Border Coalition; Rebecca Marques, ACLU of Texas; Celina Moreno, MALDEF)

On — (*Registered, but did not testify:* Susanna Cutrone, Texas Workforce Commission)

BACKGROUND: Gov. Rick Perry issued executive order RP 80 on December 3, 2014, which required all agencies under the direction of the governor to use the federal E-verify system to verify the employment eligibility of all current and prospective employees.

The order also mandated that these agencies require contractors to use the E-Verify system to verify all of certain employees. The order took effect immediately and remains in effect and in full force until modified,

amended, rescinded, or superseded by the governor.

DIGEST:

SB 374 would require state agencies to register and participate in the federal E-Verify program to electronically verify employment authorization of all new employees. The bill would apply to a department, commission, board, office, or other agency of any branch of state government, including an institution of higher education.

The Texas Workforce Commission would be required to adopt rules and prescribe forms to implement this bill.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

SB 374 would codify an executive order announced in December 2014 to verify that individuals employed in Texas were legally eligible to work in the United States. The E-verify system is the most accurate and efficient way to check a person's legal status to work in this country. More than 98 percent of new employees processed in the program are confirmed or denied within 24 hours, and many times they are verified instantly.

The E-Verify system would be accurate and effective. The federal government has improved the system, which now includes a photo matching feature. Further, if an individual were unconfirmed after an initial check, that person would be subject to another process to continue the verification and ensure accuracy.

Implementation of the E-Verify system would be quick and simple and would not impose large costs or burdens on state agencies. The bill would differ from the executive order that required verification of all current and new employees by limiting the use of E-Verify system to new employees. Contractors and general contractors would not be affected by the bill. The E-Verify system uses the same information that is already being collected on I-9 forms required for all new employees, so it would not be a burden to collect or input the information into the system.

Many state agencies, such as the Texas Facilities Commission, the Department of Transportation, and the Texas Workforce Commission, have implemented the policy without any problems. The system also is

being used by thousands of businesses nationwide. The bill would ensure that agencies did not use state tax dollars to hire immigrants who were ineligible to work legally in the United States.

Requiring agencies to use the E-Verify system would not create hiring discrimination because the system could be used only after hiring a worker and therefore could not be used to screen out prospective employees.

OPPONENTS SAY:

SB 374 would require state agencies to use a potentially inaccurate employment authorization verification system. Individuals with proper employment authorization could be matched to someone who was not eligible to work in the United States. There is greater potential for error when verifying the status of legal permanent residents and work-eligible non-citizens because federal agencies vary in how data is entered into their databases. Further, legal status can change continually, and sometimes databases are not updated quickly enough to assure an accurate verification.

This bill would impose extra burdens and costs onto the agencies required to use this system. Employers already submit I-9 forms on all new hires. Many employers have stated that transitioning to a new system would be difficult or disruptive. Training and maintaining human resources personnel to oversee the system would add costs and time, and training each of these personnel itself could take several hours per person. The bill could lead to increased discrimination in hiring and might discourage agencies from hiring people based on race or ethnicity by creating obstacles to verifying their work authorization status.

State agencies should not be required to enforce federal immigration laws. Agencies currently do not have problems with hiring immigrants who do not have legal status to work. Requiring the E-Verify system to be used by all agencies would be unnecessary at the state level.

SUBJECT: Criminal offense, civil liability for disclosure of intimate visual material

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

SENATE VOTE: On final passage, April 14 — 31-0

WITNESSES: (*On companion bill, HB 496*)
For — Chris Kaiser, Texas Association Against Sexual Assault; Randy Kildow, Texas Association of Licensed Investigators; Jennifer Tharp Comal County Criminal District Attorney; Justin Wood, Harris County District Attorney's Office; Hollie Toups; Kelly Cook; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference of Bishops; Lon Craft, Texas Municipal Police Association; Kathryn Freeman, Christian Life Commission; Aaron Setliff, The Texas Council on Family Violence; Gary Spurger, Harris County Constable Pct. 4; Julie Bassett)

Against — Mark Bennett, Harris County Criminal Lawyers; (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association; Matt Simpson, ACLU of Texas)

On — (*Registered, but did not testify:* Mike Hull, Texans for Lawsuit Reform)

DIGEST: SB 1135 would create a criminal offense and allow civil lawsuits related to the disclosure or promotion of intimate visual material.

Criminal offense. The bill would create a new criminal offense for the unlawful disclosure or promotion of intimate visual material. A person would commit an offense if:

- without consent, an individual intentionally disclosed visual material depicting another with the other person's intimate parts exposed or engaged in sexual conduct;

- the visual material was obtained or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;
- the disclosure of the material caused harm to the depicted person; and
- the disclosure revealed the identity of the depicted person, including through accompanying or subsequent information or material or information or material provided by a third party in response to the disclosure of the visual material.

It would be an offense to intentionally threaten to disclose, without the consent, visual material depicting another with the other's intimate parts exposed or engaged in sexual conduct and to make such a threat to obtain a benefit in return either for not making the disclosure or in connection with disclosure.

It also would be an offense to promote such material. A person would commit an offense if, knowing the character and content of the visual material, the person promoted the material on a website or other forum that was owned or operated by the person.

It would not be a defense to prosecution that the depicted person created or consented to the creation of the material or voluntarily transmitted the material.

It would be an affirmative defense to prosecution to the disclosure or promotion of material that:

- the disclosure or promotion was made in the course of lawful and common practices of law enforcement or medical treatment, reporting unlawful activity, or a legal proceeding;
- the disclosure or promotion consisted of visual material depicting in a public or commercial setting only a person's voluntary exposure of their intimate parts or the person engaging in sexual conduct; or
- the actor was an interactive computer service, as defined under federal law, and the disclosure or promotion consisted of visual

material provided by another person.

These offenses would be class A misdemeanors (up to one year in jail and/or a maximum fine of $4,000). If conduct constituting an offense under this section also constituted an offense under another law, a person could be prosecuted under this section, the other law, or both.

Civil liability. The bill would make defendants liable to a person depicted in intimate visual material for damages from the disclosure of the material if:

- the defendant disclosed the material without the effective consent of the depicted person;
- the material was obtained or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;
- the disclosure of the material caused harm to the depicted person; and
- the disclosure of the material revealed the identity of the depicted person in any manner, including through accompanying or subsequent information or material or material provided by a third party in response to the disclosure of the intimate visual material.

Defendants would be liable for damages arising from the promotion of the material if, knowing the character and content of the material, the defendant promoted intimate visual material on an Internet website or other forum that was owned or operated by the defendant.

A claimant who prevailed would be awarded actual damages, including damages for mental anguish, court costs, and reasonable attorney's fees. In addition, claimants could recover exemplary damages.

Courts, on the motion of a party, would be able to issue a temporary restraining order or a temporary or permanent injunction to restrain or prevent the disclosure or promotion of the material. Courts issuing such orders or injunctions could award the party that brought the motion damages of $1,000 for each violation if the disclosure or promotion was willful or intentional or award $500 for each violation if it was not willful

or intentional.

The cause of action created by the bill would be cumulative of any other remedy provided by common law or statute.

Courts would have personal jurisdiction over defendants in a suit brought under the bill if the defendant resided in Texas, the claimant resided in Texas, the material was stored on a server in Texas, or the material was available to view in Texas. The bill would require that these provisions be liberally construed and applied to promote the bill's underlying purpose to protect persons from and to provide remedies to victims of the disclosure of intimate visual material.

The bill would not apply to claims brought against an interactive computer service, as defined in federal law, for disclosure or promotion consisting of intimate visual material provided by another.

The bill would take effect September 1, 2015. It would apply to material disclosed, promoted, or threatened to be disclosed on or after that date. The bill would apply only to causes of action that accrued on or after the effective date.

SUPPORTERS SAY:

SB 1135 would address the problem of the electronic distribution of sexually explicit images of someone without the subject's permission. The images, sometimes taken without consent, may be posted on websites or e-mailed to employers, schools, family members, and others. Sometimes contact or identifying information is included.

Current laws provide inadequate deterrence and punishment for these actions. Explicit images can be uploaded to websites where thousands can see them and they can be shared with other sites. Victims can suffer threats, harassment, stalking, and sexual exploitation as well as embarrassment and shame that intrude into their work, school, or personal lives. Harm is difficult to remedy because removing images from a website rarely prevents continued distribution. Both civil and criminal avenues are important in combating these actions.

The bill would address this problem with a new offense that was carefully

crafted to not be overly broad and to meet all legal and constitutional standards. The bill would not be a prohibited content-based restriction on speech but would relate to sexual defamation and would enact permissible provisions. The bill contains several thresholds an action would have to meet to fall under the offense so that common actions would not be included. These would include requiring that the material be disseminated without consent, be obtained or created when a person had a reasonable expectation of privacy, and that the actions caused harm. The offense would include threatening to disclose material described by the bill to address situations in which a threat of disclosure had been used to blackmail others.

The bill would establish certain affirmative defenses to prosecution to ensure it captured only criminal activity and not legitimate law enforcement, medical, legal, or commercial actions. It also would be an affirmative defense to prosecution if the material depicted only voluntary exposure in a public or commercial setting.

The bill would include civil penalties as another tool to get at the economic incentive related to these actions. Current causes of action can be inadequate in some of these cases, so the bill would establish liability for the unlawful disclosure of certain intimate visual material. Civil penalties could allow those who profit from the disclosure to be held accountable along with those who make the disclosure. The bill would include injunctive relief and damages related to it to give the court the power to enforce temporary restraining orders or temporary or permanent injunctions. These damages would be important to get those inflicting the harm to abide by the court's order.

OPPONENTS SAY:

SB 1135 would be a content-based restriction on speech, which would be presumptively unconstitutional.

The state should be cautious about creating new crimes for nonviolent behaviors. Making such offenses potentially carry jail time could be too punitive given the nonviolent nature of these actions. In some cases, current statutes, including those for harassment and impersonating another, already criminalize some activities that occur in these situations. While distributing these images may be reprehensible, these cases

generally could be handled outside the criminal justice system, where victims could seek damages through civil courts.

OTHER OPPONENTS SAY:

Instead of making individuals liable for the specific actions described in SB 1135, in some cases civil suits could be brought under existing laws by raising issues such as privacy, emotional distress, or defamation.

SUBJECT: Obstruction or retaliation offense for posting public servants' information

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Moody, Hunter, Leach, Shaheen, Simpson

2 nays — Herrero, Canales

SENATE VOTE: On final passage, May 6 — 31-0

WITNESSES: (*On House companion bill, HB 1758*)
For — (*Registered, but did not testify:* Jessica Anderson, Houston Police Department; Lon Craft, Texas Municipal Police Association; Frank Dixon, Austin Police Department; Bobby Gutierrez and Carlos Lopez, Justice of the Peace and Constables Association of Texas; Shanna Igo, Texas Municipal League; Chris Jones, Combined Law Enforcement Associations of Texas; Charles Reed, Dallas County Commissioners Court; James Smith, San Antonio Police Officers Association; Eddie Solis, City of Arlington; Raymond Smith)

Against — (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association)

BACKGROUND: Penal Code, sec. 36.06 establishes the crime of obstruction or retaliation. The offense includes intentionally or knowingly harming or threatening to harm another by an unlawful act that is in retaliation for or on account of the service of another as a public servant. Offenses are third-degree felonies (two to 10 years in prison and an optional fine of up to $10,000).

DIGEST: SB 923 would amend the offense of obstruction or retaliation to make it an offense for a person to post on a publicly accessible website the residence address or telephone number of an individual the actor knew was a public servant or member of a public servant’s family or household. This action would need to be taken with the intent to cause harm or threat of harm to the individual or a member of the individual’s family or household and in retaliation for or on account of the service or status of the individual as a public servant.

It would be prima facie evidence of the intent to cause harm or a threat of harm under the bill if the person posting the information received a written demand from the individual to not disclose the address or telephone number for reasons of safety and either:

- failed to remove the address or telephone number from the publicly accessible website within 48 hours of receiving the demand; or
- reposted the address or telephone number on the same or a different publicly accessible website, or made the information publicly available through another medium, within four years of receiving the demand, regardless of whether the individual was no longer a public servant.

The offense would be a third-degree felony except that it would be a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if the conduct resulted in the bodily injury of a public servant or a member of a public servant's family or household.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

SB 923 would update the law on obstruction or retaliation to reflect an emerging threat to public servants called "doxing." This practice can involve using the Internet to research and publish online personal information, such as phone numbers, addresses, Social Security numbers, passwords, and financial information. Some are using this practice to try to harm public officials and their families. Although current law could cover some forms of retaliation based on someone being a public servant, it may not specifically cover the type of doxing in SB 923 and may not apply to some of these cases.

SB 923 would address this problem by giving law enforcement authorities another tool to combat those who would retaliate against public servants. The bill would be narrowly tailored to ensure that only those who intended to cause harm or whose conduct resulted in bodily injury would be subject to the offense. The bill would require intent to cause harm or threat of harm and in retaliation for someone being a public servant.

The penalties in SB 923 would be in line with current penalties for obstruction and retaliation and would be appropriate for this kind of behavior that causes harm or a threat of harm or that results in bodily injury.

OPPONENTS SAY:

SB 923 would be too broad of an expansion of the current offense of obstruction or retaliation. It would capture actions that should not be punished as harshly as a third-degree felony. It would be better to approach the issue of doxing by focusing on other crimes if they are committed. For example, the crimes of making a terrorist threat or harassment or the current offense of retaliation could cover actions relating to doxing in some cases.

SUBJECT: Requiring state agencies to develop data use agreements for employees

COMMITTEE: Government Transparency and Operation — favorable, without amendment

VOTE: 4 ayes — Elkins, Walle, Galindo, Gonzales

0 nays

3 absent — Gutierrez, Leach, Scott Turner

SENATE VOTE: On final passage, April 30 — 30-1 (V. Taylor), on local and uncontested calendar

WITNESSES: No public hearing

BACKGROUND: Government Code, ch. 2054 establishes the Information Resources Management Act, which provides for state policies regarding information resources.

Observers have noted that the data use agreements used by most state agencies to define an employee's duties and responsibilities on data access and usage tend to change as cybersecurity threats evolve. Because employees generally view the data use agreement only once as a part of the hiring process, they may not necessarily be aware of changes in policies and best practices.

DIGEST: SB 1877 would require each state agency to develop a data use agreement that met the needs of the agency and conformed to rules adopted by the Department of Information Resources on information security standards.

An agency would be required to update the agreement at least biennially, but could do so whenever necessary. The agency would have to distribute the data use agreement and any subsequent updates to agency employees, who would be required to sign the agreement and any updates.

To the extent possible, an agency would have to provide cybersecurity

awareness training to agency employees coinciding with the distribution of the data use agreement and each biennial update.

This bill would take effect September 1, 2015.